ASSESSING THE EFFECTIVENESS OF ANTI-CORRUPTION LAWS IN ZAMBIA

BY

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Assessing the effectiveness of anti-corruption laws in Zambia

By

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I recommend that the directed research prepared under my supervision by William Chewe Musonda, entitled:

Assessing the effectiveness of anti-corruption laws in Zambia

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to format as laid down in the regulations governing directed research.

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C. Chitupila

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V. C. Chitupila

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20.04.2011
DATE
I, WILLIAM CHEWE MUSONDA, do hereby declare that this Directed Research Essay is my genuine work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other Institution for the award of a Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without prior authorization in writing of the author.

Candidate’s Signature
Dedications

I would like to dedicate this work to my four children, Anastasia, James, Shepherd, and Divine. These children have seen me work late on this paper, and given me all the inspiration I needed by passing their respective school grades even at the time my presence could not be guaranteed, thus drove me into more enthusiasm for my research. All this was done in the painful absence of their dear mother who departed to glory on 28th April 2005.

To my mother Felly, I say thank you for ignoring my perpetual absence from the village, and frequent excuses for being “too busy” in the city. Mother I thank you for reminding me that it is important not just to be schooled, but to get “educated”. Mum, I love your wisdom so much.

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May the Lord richly bless you all.
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I would like to thank the Law Association of Zambia secretariat for allowing me to use their members’ database as a population from which I managed to get responses for the questionnaire.

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<td>ACC</td>
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<td>AROLS</td>
<td>Accountability through Reforms in the Legal Systems</td>
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<td>DFID</td>
<td>Department for International Development</td>
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<td>Movement for Multi-party Democracy</td>
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<td>Member of Parliament</td>
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CHAPTER ONE

EXAMINING THE PRINCIPAL ANTI-CORRUPTION LAWS

1.2 Introduction

In Zambia, the principal anti-corruption legislation is the Anti-corruption Commission Act No. 42 of 1996, which came into effect after the repeal of the Corrupt Practices Act No. 14, of 1980. The precursor of this law is pre-independence Prevention of Corruption Act of 1916, which was to be cited together with the Public Bodies Corrupt Practices Act of 1889, and the Prevention of Corruption Act of 1908.¹

The legal provisions on corruption in post-independence Zambia were first contained in the Penal Code, Chapter X. Section 56 of this legislation was concerned with corruption offences in the public service and did not cover corruption in the private sector.

In July 2002, an inter-agency Task Force on Corruption comprising the Zambia Police (ZP), Drug Enforcement Commission (DEC), Anti-Corruption Commission (ACC), and the Zambia Intelligence Security Services (ZISS) was constituted to investigate abuse of office, mismanagement of government funds, theft of government resources, money laundering, and corruption between 199 and 2001.²

Part 4 of the Anti-Corruption Commission Act³ defines the offences that constitute “a corrupt act” and associated penalties. The Penal Code,⁴ Cap 87 of the Laws of Zambia as the other key legislation prescribing crimes and associated penalties, contains a number of provisions dealing with corruption, abuse of office and the exercise of public authority. Chapter X

¹ National Anti-Corruption Policy, 2009.
³ Anti-Corruption Commission Act, Act No. 42 of 1996.
⁴ Penal Code Act, Cap 87 of the Laws of Zambia.
proscribes corrupt conduct in a public office and includes provisions relating to false claims for personal gain, false assumption of authority and impersonating of public officers.

The last two legislations cited above are the determinate laws enacted to fight corruption in Zambia. Whether these laws can be said to be properly crafted and adequate to handle the high levels of corruption experienced in the recent past in Zambia is what this study is all about. The general misuse of public assets for private purposes by public officials is worrisome. The international community has acknowledged the existence of the problem, saying it demands action that is not restricted to mere recommendations but must involve legally improved remedies.\(^5\)

1.3 Statement of the Problem

The United Nations (UN) General Assembly urges Member States to “carefully consider the problems posed by the international aspects of corrupt practices, especially as regards international economic activities carried out by corporate entities, and to study appropriate legislative and regulatory measures to ensure transparency and integrity of financial systems and transactions carried out by such corporate entities.”\(^6\)

Zambia is currently rated as the Eleventh (11\(^{th}\)) among the One Hundred and Two (102) countries surveyed by Transparency International Corruption Index,\(^7\) which is corroborated by the Anti-Corruption Commission statistics which registered an increase of 49% in reported corruption cases between 2005 and 2006.\(^8\)

According to Marie Chêne, Overview of Corruption in Zambia (2008),\(^9\) corruption is one of the three major concerns of the Zambian citizens. In the above report she states that 87% of

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\(^{5}\) Ministry of Foreign Affairs of Finland; A Handbook of Anti-Corruption Techniques for use in International Development Cooperation, Helsinki, 2003 Page 6.

\(^{6}\) Article 7 of the UN General Assembly Resolution 51/59 Action Against Corruption and International Code of Conduct for Public Officials.


\(^{8}\) Anti-Corruption Commission 2006 Annual Report.

the people interviewed perceived corruption to be a problem in the country, with a growing tendency for officials to demand unofficial payments in return for services rendered. The report from Chêne’s study shows that corruption remains a significant problem at both the administrative and political levels in the country.

Corruption in Zambia has been so rife that even when cases are taken to court the perpetrators are not adequately dealt with. For instance, the Chiluba case,\textsuperscript{10} occurred during the time the two principal laws had been passed, and the Judiciary and Government have been reluctant to have the London High Court Judgment earlier obtained by the state, registered in Zambia. This study aims at obtaining information on solutions to solve the above cited problem.

\textbf{1.4 Purpose of the Study}

The objective of this study is to explore and assess the effectiveness of the ACC Act\textsuperscript{11} and the Penal Code Act, in averting corruption. It will catalogue chronicled research observations, and scholarly writings on the short-comings in the anti-corruption laws in Zambia.

The Study has three broad objectives. The first objective is to identify and examine the principle anti-corruption laws in Zambia.

The second objective is to examine the effectiveness the Anti-Corruption Act, No. 42 of 1996 in criminalizing, and sentencing for offences of corruption.

The third objective is to asses the deterrent impact of the Penal Code Act\textsuperscript{12}, and the ACC Act, in criminalizing corruption offenses and sentencing.

\textbf{1.5 Significance of the Study}

This study is important as it informs the development of the law on corruption in Zambia, in conformity with SADC and International Anti-Corruption Laws. Various experts such as

\textsuperscript{10}The Attorney General v Frederick Jacob Titus Chiluba and Others (2007) HC 004.

\textsuperscript{11} Anti-Corruption Commission Act No. 42 of 1996 of the Laws of Zambia.

\textsuperscript{12} Penal Code Act, Chapter 87 of the Laws of Zambia.
Lawyers, Parliamentary Draftspersons, The Law Revision Committee, Authors and Scholars are consulted with a view to obtain from them, recommendations for proposed amendments to the principle laws on corruption cited above. In this way, this study will contribute meaningfully to the body of knowledge on law reform in Zambia.

1.6 Literature Review

There are several versions of the definition of corruption, being widely defined as observed by C. Kunaka, N. Mushumba and P. Motseza in the The SADC Protocol against Corruption: A Regional Framework to Combat Corruption (2004). While the definitions in the SADC protocol are informative, the study’s definitions are those contained in the ACC Act, which defines corruption as the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement or the misuse or abuse of a public office for private advantage or benefit.

Marie Chène, writing on Coordination Mechanisms of Anti-Corruption Institutions (2009), notes that faced with the challenges of endemic corruption, many governments in developing countries have opted for the establishment of one or more strong and centralized anti-corruption bodies, whose mandate is to provide leadership and technical expertise on key areas of anti-corruption work. In most cases, the new specialized anti-corruption bodies are seen to be established in parallel of the existing traditional institutions that retain jurisdictions on courts, prosecutors, line ministries, auditor general, and the office of the ombudsman.

Chène’s observations may not be the very focus of this study, but lessons on strong anti-corruption bodies cannot be ignored, because even the most effective laws would need firm institutional frameworks. For instance her observation that in many developing countries, the

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14 Section 3 of the Anti-Corruption Commission Act Number 42, of 1996.

judiciary is often the weakest part of the overall institutional arrangements for anti-corruption work, undermining the credibility of the national integrity system as a whole, is informative for this study.

Pilliat Matchesheza and Heather Mupita (Editors), Southern African Development Community Laws: A Case for Harmonization (2009)\(^\text{16}\) state that in terms of Article 4 (l) of the SADC Protocol against corruption, each State Party undertakes to adopt measures that will create, maintain and strengthen systems for protecting individuals who, in good faith, report acts of corruption. It has generally been observed in many parts of the world that protecting whistle-blowers is crucial in the fight against corruption. It is important to note that Zambia does not have a modern and comprehensive code on Evidence and for many years, under the Zambian laws there have been no clearly defined mechanisms for the protection of witnesses in public corruption cases, save for the recently passed Whistle-blowers Act.\(^\text{17}\)

Among the other issues raised by Pilliat Matchesheza and Heather Mupita were that the act of corruption set out in Article 3(1) (c) of the Protocol, that is, illicit obtaining of benefits by public officials in the discharge of their duties had not been dealt with under the Anti-Corruption Commission Act. Also, the Anti-corruption Commission Act does not specifically deal with seizure and confiscation of proceeds of corruption. These are among the most serious issues the study will explore on, with a view to determine whether there has been any commitment to include these clauses in the most recent amendments to the Zambian anti-corruption laws.

Dr. Mwenda\(^\text{18}\) has examined the efficacy of legal and institutional frameworks for fighting corruption in Zambia. The literature will be key and relevant for this study, in discussing a legal framework that could be desirable to effectively combat corruption.


\(^{17}\) Whistle Blowers Act No. 12 of 2007

USAID reports in its Anti-Corruption Legal Assessment Study on Zambia (2004)\textsuperscript{19} that Sub-Saharan Africa is known to have Disciplinary Codes and Codes of Ethics for the public service, but most of these have been found ineffective in averting corruption. In Zambia, for instance, one major weakness of the Public Service Disciplinary Code cited in the study is that it prescribes a long grievance procedure which in some instances could affect prompt and timely action on serious offences such as corruption. The above observation is not directly related to this study but will assist in informing the paper on ethics in the public service, covered in the last chapter.

Donge\textsuperscript{20} writes, noting that anti-corruption reforms, have left insignificant impact in combating corruption. He further observes that like elsewhere in Africa anti-corruption strides have ended in partial reform and ineffective. The study by Donge is important in that it helps to assess what others have observed on the Chiluba case, especially on the administration of justice in corruption matters involving public officials.

The point of departure with this study is the single focus on the legal framework and not so much on political factors. This study does not focus so much on the Codes of ethics and disciplinary codes, but whether the provisions in the ACC Act dealing with these aspects of official conduct are relevant, especially, and if they have been adequately defined for the courts to criminalize and met out penalties for the multiple and varying offences of corruption. Study also inquires into the effect of Government’s removal of the abuse of office clause as narrated by Enerst Chanda; Government Removes ‘abuse of office’ from ACC Act from the ACC Act (2010)\textsuperscript{21}.


\textsuperscript{21} Saturday Post, 25 September 2010.
1.7 Methodology

The study will rely on both secondary and primary sources of data. The study will examine the ACC Act\textsuperscript{22} and the Penal Code, and other statues such as The Prohibition and Prevention of Anti-Money Act,\textsuperscript{23} and will also review various publications on corruption, which include scholarly research papers, books, and documents such as judgments, policy papers, and articles by internationally renowned institutions involved in research and disseminating anti-corruption information.

The instrument for collecting primary data will be a questionnaire, interviews with heads of relevant government departments, eminent lawyers, senior members of the Judiciary, university lecturers, and researchers and representatives of the donor community and Non Governmental Organizations.

1.8 Outline of Chapters

The study comprises five chapters;

The Chapter One contains the title of the study, introduction, a statement of the problem, purpose of the study, review of existing literature, methodology and an outline of the study.

Chapter Two considers the international anti-corruption legal regime, discussing briefly the United Nations Conventions, and the SADC Protocol against Corruption.

Chapter Three examines the factors which led to the enacting of the ACC Act of 1996, specifically the mischief which was meant to been cured. This chapter ends by reviewing the extent to which the mischief has been cured, taking into consideration corruption cases which have been prosecuted since then and the effect of the recent revision to the Act which has led to the removal of the abuse of office clause.

\textsuperscript{22} The Anti-Corruption Commission Act No. 42 of 1996 .

Chapter Four examines the Penal Code Act, and the Anti-Corruption Commission Act, how they have been used in the fight against corruption, and ascertain whether the latter has is a supplementary or a complementary statute to the former.

Chapter five contains a conclusion and recommendations from key findings with suggestions on changing the laws with a view to strengthen the fight against corruption.
CHAPTER TWO

THE REGIONAL AND INTERNATIONAL ANTI-CORRUPTION LEGAL FRAMEWORK

2.1 Introduction

This chapter will focus on examining the International Anti-corruption Legal Regime, specifically the United Nations Convention against Corruption and the Southern African Development Community (SADC) Protocol against Corruption, both, to which Zambia is a State Party.

2.2 The United Nations Convention against Corruption

The United Nations Convention against Corruption was adopted by the General Assembly by its resolution 58/4 of 31 October 2003. The purposes of this Convention are: "(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; "(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; “(c) To promote integrity, accountability and proper management of public affairs and public property."24

According to the United Nations Office on Drugs and Crime,25 the Convention provides for the obligation by State parties to take legislative measures against corruption. Article 8 contains both mandatory provisions and obligations to consider certain measures. Mandatory is a commitment to promote integrity in public administration and to synchronize systems, measures and mechanisms introduced in the course of implementing the article with the relevant initiatives of regional, interregional and multilateral organizations. The Convention obliges States parties to carry out remedial measures aimed at averting corrupt practices.

More specifically, paragraph 1 of article 8 requires States parties to promote, inter alia, integrity, honesty and responsibility among their public officials, in accordance with the

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fundamental principles of their legal system. The rest of the article provides more specific guidelines and suggestions States must seriously consider, such as the introduction of codes of conduct for the performance of public functions. States parties are further required to implement the provisions of the article, and they are to take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996, where appropriate and in accordance with the fundamental principles of their legal system. Article 9 focuses on proper and transparent processes relative to public procurement and public finances. Following the general and mandatory provision asking States parties to promote integrity in their public administration, article 8 further requires them to endeavor to apply codes or standards of conduct for the correct, honorable and proper performance of public functions within their institutional and legal systems.

Previous experience shows that it is also important that the principles and ethical rules are known and accepted by officials. Some good practices include the development of rules through a process of consultation rather than a top-to-bottom approach, the attachment of ethical rules to employment contracts and the regular provision of awareness-raising initiatives. Such codes enhance predictability and support the preparation and training of public officials and facilitate the resolution of any dilemmas and frequent questions that may arise in the course of their work. Codes of conduct also clarify the standards and rules to be observed, thereby rendering the task of identifying and reporting violations easier.

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26 United nations Convention Against Corruption, Article 8, paragraph 3.


The UN Office on Corruption and Crime notes that the introduction of such codes may require legislation.\textsuperscript{31} Article 8 requires that States consider the establishment of measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions, in accordance with the fundamental principles of domestic law.\textsuperscript{32} It should be noted, however, that this provision refers to a specific obligation, under the general provision of preventing corruption. Instead of simply requiring reports on the commission of a crime, the point here is to establish mechanisms, systems and measures facilitating such reporting.\textsuperscript{33} Conflicts of interest as well as perceptions of such conflicts undermine public confidence in the integrity and honesty of civil servants and other officials. As a further enhancement of transparency in public administration, article 8 requires States parties to endeavor, where appropriate and in accordance with the fundamental principles of their domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, as a minimum various areas of interface with the public from which a conflict of interest may result with respect to their functions as public officials.\textsuperscript{34} Finally, normative standards and processes of detection and transparency need to be accompanied by appropriate sanctions. Article 8 requires that States parties consider taking, in accordance with the fundamental principles of their domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with the article.\textsuperscript{35}

The above standard implies that States parties are expected to come up with legal instruments within their domestic laws by which adequate punishment would be meted for would-be offenders.

\textsuperscript{31} United Nations, Legislative guide for the implementation of the United Nations Convention against Corruption, 2006 Page 33.

\textsuperscript{32} United Nations, Legislative guide for the implementation of the United Nations Convention against Corruption Page 33


\textsuperscript{34} Article 8 paragraph 5 of the United nations Convention Against Corruption.

\textsuperscript{35} Article 8, paragraph 6 of the United nations Convention Against Corruption.
Under paragraph 1 of article 9 of the United nations Convention against Corruption, States parties are required to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective among other things in preventing corruption, in accordance with the fundamental principles of their legal system. Such systems may take into account appropriate threshold values in their application, for example in order to avoid overly complex procedures for comparatively small amounts. It has been observed that past experience suggests that excessive regulation can be counterproductive by increasing rather than diminishing vulnerability to corrupt practices.36

Among the issues the procurement systems are required to address includes an effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to paragraph 1 of article 9 are not followed.

The United Nations Office on Drugs and Crime observes that the introduction of these measures may require amendments or new legislation or regulations, depending on the existing legal framework of each State party.37 States parties are free to address additional issues. The above listing is only the minimum required by the Convention. At the same time, the interpretative notes indicate that “nothing in paragraph 1 shall be construed as preventing any State party from taking any action or not disclosing any information that it considers necessary for the protection of its essential interests related to national security”. Article 9, paragraph 2, requires that States parties take appropriate measures to promote transparency and accountability in the management of public finances, in accordance with the fundamental principles of their legal system. Such measures must include the following, as a minimum: (a) Procedures for the adoption of the national budget; (b) Timely reporting on revenue and expenditure; (c) A system of accounting and auditing standards and related oversight; (d)

36 United Nations, Legislative guide for the implementation of the United Nations Convention against Corruption, 2006 Page 34.

37 United Nations, Legislative guide for the implementation of the United Nations Convention against Corruption, 2006 Page 34.
Effective and efficient systems of risk management and internal control; and (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in article 9, paragraph 2.

2.3 The Southern African Development Community (SADC) Protocol against Corruption

Article 3 of the SADC Protocol against Corruption sets out eight acts of corruption to which the protocol is applicable. These acts relate to the offering, giving, receiving, obtaining or soliciting of anything of value (that is, advantage) to illicitly influence actions of officials in the discharge of their duties. In relation to public officials, acts of corruption are recognized to extend to diversion by them of public property to purposes to which the property was not intended for.

Philiat Matcheza and Heather Mupita,38 have observed that in Zambia, the relevant provisions are contained in the Parliamentary and Ministerial Code of Conduct Act. Under Act, a member of the national Assembly is guilty of breach if he knowingly acquires any significant pecuniary advantage, or assists in the acquisition of pecuniary advantage by another person.39

On Government revenue collection and control systems, Article 4 (c) of the Protocol requires States Parties to adopt measures which will create, maintain and strengthen government revenue collection and control systems that deter corruption as well as laws that deny favourable tax treatment for individual or corporation expenditures made in violation of the anti-corruption laws of the State Parties.

On the laws that punish those who make false and malicious reports against innocent persons, Article 4 (1) (f) enjoins States Parties to adopt measures that will create, maintain and strengthen laws that punish those who make false and malicious reports against innocent persons. In Zambia, Matcheza and Mupita note, section 24 of the Anti-corruption Commission


39 Section 3 of the Parliamentary and Ministerial Code of Conduct Act, Chapter 16 of the Laws of Zambia
Act makes it an offence for a person to give a false testimony or report or to mislead the Director-General, Deputy Director-General or other officers of the Commission.

It has been observed that while the SADC Protocol enjoins States Parties to adopt measures as may be necessary to enable confiscation of proceeds, derived from offences established in accordance with the Protocol, or property the value of which corresponds to that of such proceeds, in Zambia three Acts deal with the issue. The Criminal Procedure Code Act, provides for power to issues search warrants, execution of search warrants and detention of property seized in a search. Sections 321 and 322 of the Penal code Act deal with illegal possession of diamonds and emeralds and forfeiture of the same on conviction. He Prohibition and Prevention of Money Laundering Act deals with seizure and forfeiture of assets in relation to money laundering.

However, the Zambian Anti-Corruption Commission Act the main piece of legislation which deals with corruption does not contain any provisions specifically on seizure and confiscation of proceeds of corruption. Matcheza and Mupita assert that this is a serious weakness in the ACC Act which needs urgent redress as the provisions of Article 8 of the protocol have not been addressed by Zambian Anti-Corruption Laws.

40 Article 8 of the SADC Protocol Against Corruption.

41 Section 121 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia.


43 Philiat Matcheza and Heather Mupita (Editors), Southern African Development Community Laws- A Case for Harmonization., Page 78.
2.4 Conclusion

Zambia has been found wanting in the instances cited above where guidelines enshrined in the Protocol have not been followed, in order to enact appropriate domestic laws to address corruption issues. Most of the laws on corrupt practices do not provide for deterrent punishment.
CHAPTER THREE

FACTORS LEADING TO THE ENACTMENT OF THE ANTI-CORRUPTION COMMISSION ACT, NO. 42 OF 1996

3.1 Introduction

This chapter discusses factors which led to the enacting of the Anti-Corruption Commission Act No. 42 of 1996, and the mischief it was meant to cure. The chapter further explores the extent to which the mischief would be said to have been cured, in view of corruption cases prosecuted and the effect of the current amendment to the ACC Act which has led to the removal of the abuse of office clause contained in section 37 of the Act.

3.2 Establishment of the Anti-Corruption Commission

Matenga writes, that in 1980, the Zambian government took a bold step by passing a Bill in Parliament that laid the way for the establishment of a separate body to investigate and prosecute corruption offences. The Corrupt Practices Act No. 14, 1980, he notes, provided for the establishment of the Anti-Corruption Commission. The functions of the Commission were threefold. Apart from investigations, the Commission was also mandated to prevent the occurrence of corruption in both public and private bodies. Matenga further asserts that the Commission was established to perform this function through examining the practices and procedures of public and private bodies and advise these bodies on systematic reforms in policies and procedures in order to reduce the vulnerability to corruption. A third function of the Commission was information dissemination on the evil and dangerous effects of corruption on society. This education campaign was meant to foster public support against the phenomenon. It is the objective of establishing the Anti-Corruption Commission which of interest in this study as it informs the inquiry on the mischief which was meant to be cured by enacting the law.


3.3 The quest for an ‘autonomous’ Anti-Corruption Commission- curing the mischief

Matenga (1998)\textsuperscript{46} notes that during the first term of office of the Movement for Multi-party Democracy (MMD) government (1991-1996), the public, opposition parties, the privately owned tabloid press and the donor community voiced concern over the level of corruption amongst government leaders. There was a growing perception across a broad- spectrum of people that the President Mr. F.J.T. Chiluba was condoning corruption and shielding some of his top colleagues in government. These persistent corruption accusations reached a crescendo in 1996 prior to the second multi-party elections in the Third Republic.

Matenga\textsuperscript{47} further notes that donor pressure especially, forced the MMD government to table a Bill in Parliament that would seek to give the Anti-Corruption Commission operational autonomy from the Executive. He avers that the Anti-Corruption Commission Bill was reluctantly tabled by the government in Parliament in October 1996. The Bill was passed and subsequently signed by the Republican President Mr. F.J.T. Chiluba on November 20, 1996. The Anti-Corruption Commission Act No. 42 of 1996, thus, provided for the establishment of the Anti-Corruption Commission as an autonomous body and repealed the Corrupt Practices Act No. 14 of 1980.

Matenga states that on March 17, 1997, the Anti-Corruption Commission started operating as an ‘autonomous’ body when the President signed a statutory instrument to that effect\textsuperscript{48}. The provisions of the Anti-Corruption Commission Act No. 42 of 1996 meant to remove the Republican President from direct control of the affairs of the Commission. The Act instead provided for the establishment of the board of Commissioners appointed by the President to whom the Commission shall report. The perception was that autonomy would enable the Anti-Corruption Commission exercise absolute impartiality. This would mean that top government leaders found to be corrupt would be punished according to the existing law regardless of their


position or status in Zambian Society.\textsuperscript{49} For instance in December 1993 some of President Chiluba's own government Ministers namely Ronald Penza, Boniface Kawimbe and Dean Mung’omba accused their colleagues of being involved in corruption and drug trafficking.\textsuperscript{50} Earlier in 1992, barely a few months of the MMD reign, two Cabinet Ministers, namely Baldwin Nkumbula and Akashambatwa Mbikusita-Lewanika very close colleagues of Mr. Chiluba, resigned their cabinet posts citing corruption in the new MMD government.\textsuperscript{51}

It is this autonomy yearned for by the architects of the ACC Act which is seen to have been perceived as a possible solution to the mischief espoused in the corruption instances cited above involving senior government officials. However, whether the mischief has been addressed, and to what extent is one of the cornerstones of this study.

According to a USAID study of 2004, there has been, in the last decade heightened attention on the high levels of corruption in the various sectors, particularly, the public service sector in Zambia.\textsuperscript{52} This attention is justified in many ways, especially considering that Zambia was ranked, at the time of the study, as the eleventh most corrupt country in the world according to the Transparency International Corruption Perception Index.\textsuperscript{53} This perception is attested to by the reports from the Anti-Corruption Commission. For instance, the study records that in 1996, there were a total of 633 complaints received by the Commission. Four years later, in 1999, 943 complaints were received, representing an increase of about 49%. However, it has been noted that most of these complaints related to petty corruption. The study further observes that in the recent past the nation has witnessed an escalation in grand corruption. Grand corruption has manifested itself in the public procurement of goods and services, misappropriation of public funds, privatization of state owned enterprises and authorization of development projects, to mention but a few.\textsuperscript{54} It has also been observed that cases of grand

\textsuperscript{49} C.R. Matenga, Is it Endemic in Zambia? (1998), \url{http://www.fiuoc.org/iaup/sap/} accessed on 24\textsuperscript{th} September 2010


\textsuperscript{52} USAID, Anti-Corruption Legal Assessment Study, 2004, Page 7.

\textsuperscript{53} Transparency International: Corruption Perception Index, 2008, Page 8.

\textsuperscript{54} Transparency International: Corruption Perception Index (2008) Page 9

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corruption have been particularly highlighted since the ascendency of President Levy Mwanawasa to the Presidency. This resulted in the prosecution of high profile cases before the courts of law. Other forms of corruption that have come under sharp focus include electoral corruption. The December 20001, Presidential, Parliamentary and Local Government elections were said to have been marred by electoral malpractices consequent to which a total of 40 elected Members of Parliament (MPs) had their elections petitioned in the courts of law and the presidential election was also petitioned, the study further reviewed.

The Accountability through Reforms in the Legal Systems (AROLS/Zambia) a programme implemented by USAID under the broader ambit of S08 specifically intermediate report, also revealed that a number of studies undertaken in relation to the scourge of corruption have come to the conclusion that some of the major causes of corruption included weak enforcement of anti-corruption legislation owing to incapacity of relevant institutions, weak and ineffective watchdog institutions, absence of ethical leadership by political leaders and lack of political will to fight corruption.

It very clear from the study above that the fight against corruption in Zambia, by enacting laws aimed at creating autonomous watchdog institutions such as the Anti-Corruption Commission has faced many challenges, as corrupt practices among senior government officials have continued to be recorded.

3.4 Analysis of the revision of the Anti-Corruption Commission Act

While it is noteworthy that the ACC Act of 1996 was enacted to deal with high levels of corruption mainly in the public sector, involving public officials in Government, it is clear that this law has still been perceived to be inappropriate, and has consequently attracted heated debates among scholars. This follows the assenting into law of the Anti-Corruption


56 Anti-Corruption Legal Assessment Study, Page 8.

(Amendment) Act No. 38 of 2010 on 14th November 2010. It has been observed that the abuse of office clause needed to be removed because of its unconstitutionality, according to Professor Patrick Mvunga, reports the Zambian Chronicle (2010). The President assented to the Anti-Corruption Commission (ACC) Act and warned that there would be no sacred cows in the fight against corruption. The president said, in a speech read for him by Vice-President George Kunda that section 38 of the ACC Act now covered everyone both from the public and the private sector as opposed to section 37 which only targeted civil servants.

Professor Mvunga argues that Section 37 of the Anti-Corruption Commission (ACC) Act needed to be removed because it gave unrestrained power to the court to convict an accused person who chooses to remain silent in a corruption case. The Professor asserted that the section was unconstitutional, stating that the decision to amend it was long overdue and the country must seek solace in the Penal Code which had not been severed from the statutes.

The Professor, who chaired the 1990 Constitutional Review Commission (CRC), said the wording in the Act made the accused person guilty unless he gave a satisfactory explanation to the court. He said the law was against the general values of delivering fair justice where people were found guilty for them to explain their side of the story. Prof Mvunga said he objected to the provision because it required the accused to give an explanation on oath and if the accused person remained silent, he would have failed to give the satisfactory explanation. Professor Mvunga further stated the following:

"In the instance of keeping silent, the effect of the provision is for the court to find the person guilty. This is contrary to Article (18) 7 of the Constitution which states that a person shall not be compelled to give evidence at his trial."

Professor Mvunga contested that his decision was consistent with the ruling by High Court Judge Dennis Chirwa in a corruption case in 1984 in which he ruled that a person could not be

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compelled to give evidence on oath if he elected to make an unsworn statement. Judge Chirwa ruled that an accused person had the choice of remaining silent or saying something and if he chose to say something, he did so on oath or say something by way of an unsworn statement.

He said to argue its case, the State had stated that article 53 (1) which was now ACC Act (37) was in direct conflict with the Constitution. Professor Mvunga said Judge Chirwa described the Act as null and void and should be severed from the Act. This was in the Thomas Mumba (1984)\(^6\) case where the judge ruled that an accused person should not be compelled to give evidence on oath if he elects to make an unsworn statement.

Prof Mvunga is quoted to have said:

"This is why I take the position that Section 99 of the Penal Code, Cap 87 on the offence of abuse of authority of office as a better formulation and that in fact, this offence has not been abolished."

His views were shared by Deputy Minister of Justice Toddy Chilemba,\(^6\) who stated that there was no need for Article 37 of the ACC Act which relates to abuse of office because public officers have other sources of income.

Government stated on 9\(^{th}\) July 2010 in the Times of Zambia said there was need to review the Anti-Corruption Commission (ACC) Act in accordance with the present global and national realities that take into account the fact that public officers have other sources of income.

The Deputy Minister said in an interview that the current Act was insensitive to the fact that public officers had other sources of income, and it would, therefore, be unfair to criminalise a person with wealth more than their income.

He said the current law as provided for in Section 37 of the ACC Act of the Laws of Zambia was wrong because it assumed that any public service worker with wealth above their income


had engaged in wrong acts. The Minister further said the current law as provided for in Section 37 of the ACC Act of the Laws of Zambia was wrong because it assumed that any public service worker with wealth above their income had engaged in wrong acts. He noted that the economic situation had changed and workers were earning other incomes by engaging in other economic activities.

According to Section 37 of the ACC Act, a director-general, deputy director-general or any officer of the commission authorised in writing by the director-general, may investigate a public officer where there were reasonable grounds to believe that such public officer maintained a standard of living not commensurate with the present or past official emoluments.

There have been divergent views on the ACC Amendment, with some sectors of society opposing the above assertions on the passing of the new graft law. Both sides to the argument seem to strongly point to international treaty law as the mirror.

Professor Michelo Hansungule, writes Ernest Chanda (2010), 63 challenged the Zambian Government to explain the mischief they had found with the abuse of office offence which they removed from the Anti Corruption Commission (ACC) Act, and wrote to the Clerk of the National Assembly, protesting the removal of the abuse of office offence from the Act. In an interview, the Pretoria-based law Professor further challenged Government to disclose the legal rationale behind the decision in order for people to appreciate and understand it. He argued that for any government to repeal a law there must be strong grounds which were in the public interest.

Professor Hansungule queried as follows:

"Where exactly is Rupiah Banda driving the country? Can the government tell us what is wrong with this clause as to make them convene Parliament to delete it? What mischief have they found with this law? Where is the non-conformity between section 37 and the Article of the UN Convention? Laws are made by men and women. The time we believed they were made by God is long gone. Consequently, it is in the nature of law that it can be amended, revised, repealed and new ones introduced. But this is not done lightly, certainly not at the whims of one person or clique. There must be reasons for changing the law, which reasons should pass through the democratic threshold."

He further averred:

"The point is we have not used the Penal Code against corruption for a long time. It is de lege ferenda. Why? Because it has never achieved the purpose. This is the worst form of hypocrisy on the part of our government to unashamedly ransack a clause whose only mistake is that it has successfully been used in previous cases to protect public resources. Abuse of office is one of the most rampant white-collar crimes in our country. Zambia has lost billions of kwacha as well as opportunities through abuse of office. It must be clearly understood that abuse of office is usually not a crime for junior civil servants and others in their league. Usually, junior civil servants have no power to abuse. Rather, it is the powerful politicians with overwhelming power that tend to abuse it for personal gain."

There have been a number of arguments against the removal of the abuse of office clause from the ACC Act, noted among them being the Law Association of Zambia’s (LAZ) view on the matter. LAZ President Stephen Lungu⁶⁴ said the Association would not support the removal of the abuse of office clause from the ACC Act. Mr. Lungu stated as follows:

"I do not know what the provisions that are being amended are. If it is true that the intention is to remove particular clauses from the Act, then it is a sad development and it is that we cannot obviously support," and asserted that “those in government should explain the mischief they were trying to address by removing the contentious clause.”

Kombe Chimpinde (2010)⁶⁵ writes that Maxwell Nkole, the former Task Force on Corruption Chairman has observed that the removal of the abuse of office is the government’s calculated move to shield culprits, and it had the potential to weaken the fight against corruption as Police had no capacity to fight the vice. “This is why the past governments applied specialised skills in investigating and prosecuting such types of crimes, as they required specialised laws under specific agencies to trace them. It was on this law that the Task Force on Corruption

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⁶⁴ The Post, Friday, 9th July 2010.

recovered a number of properties that were stolen from Zambians. People knew investigations would come sniffing whenever they suspected anything about a public official.” Nkole said

3.5 Conclusion

It is clear from the arguments above that the ACC Act was enacted because of the rising levels of corruption involving senior government officials, and the objective was to create an autonomous body which would deal with the vice, without interference from the Executive arm of government. Amid the administration of this law, corruption levels have continued to be on the increase among public officials, and its revision has opened up a heated corporate governance debate. There is a disagreement on the removal of the abuse of office clause from the ACC Act among eminent Zambian lawyers drawing from the views expressed above. It is clear that one school of thought in support of the executive’s stand advocates for the preservation of constitutional rights of the accused persons, while those opposed to this view cannot be convinced the removal of section 37 from the ACC Act was for curing a significant mischief. It is worth noting that the depth of the debate points to the fact that the ACC Act needs to be amended to make it relevant to effectively combat the current levels of corruption in Zambia.

In the next chapter an analysis has been made on the effectiveness of the Penal Code Act and the Anti-Corruption Commission Act, and the perceived impact on amending the laws.
CHAPTER FOUR

ANALYSIS OF THE PENAL CODE ACT, AND THE ACC ACT

4.1 Introduction

This chapter discusses the interview findings and analysis of the Penal Code Act and the Anti-Corruption Commission Act in the fight against corruption, focusing on offences on corrupt practices, confiscation and seizure of proceeds derived from corruption offences and prosecution of money laundering activities.

Article 8 of the SADC Protocol against Corruption enjoins a State Party to adopt measures necessary to enable confiscation of proceeds derived from offences established in accordance with the Protocol, or property the value of which corresponds to that of such proceeds. There is also a request for State Parties to take measures necessary to enable competent authorities identify, trace and freeze or seize proceeds from corrupt practices.

4.2 Analysis of questionnaire responses on the Penal Code Act

The study revealed that 80% of the respondents affirmed that that they had read the Penal Code, specifically on criminalization and punishment for corrupt practices. On post-conviction forfeiture of property used for or derived from commission of an offence, 68% of the respondents said the provision helps in combating corruption.

It was observed by 75% of the respondents that the Penal Code was a supplementary law to the ACC Act. Most respondents noted that the Penal Code contained offences and related provisions for punishment which were not covered under the ACC Act. It was observed by 41% of the respondents that that the Penal Code provides for punishment for corruption offences, and that Section 99 dealing with abuse of office, and sections 100, 101, 102 and 103 point to this fact. It was noted by the respondents that Section 99 of the Penal Code provided a supplement on the offence of abuse of office, an offence which had been proscribed under the Anti-Corruption (Amendment) Act of 2009.
Sections 99 of the Penal Code provides that; “Any person who being employed in the public service does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights or interests of the Government or any other person, is guilty of a misdemeanor. If the act is done or directed to be done for purposes of gain, he is guilty of a felony and is liable to imprisonment for three years.”

It has been observed by Matsheza and Mupita (2004) that the Prohibition and Prevention of Money Laundering Act is a more elaborate statute on confiscation and seizures of proceeds of corruption. The scholars observe by contradistinction that the Zimbabwean Criminal Procedure and Evidence Code provides for the disposal and forfeiture of seized items. The seized property may be returned to perform from whom it was seized if he may lawfully possess it and is entitled to take such possession, or to another person who may lawfully possess it or it may be forfeited to the state.

Part VI of the Prohibition and Prevention of Money Laundering Act deals with forfeiture and seizure of asset in relation to money laundering. In terms of Section 15, an authorized officer is obliged to seize property which he has reasonable grounds to believe is derived or acquired from money laundering. Section 16 empowers the officer who conducted the seizure, at any time before its forfeiture under the Act, to order the release of the property to the person from whom it was seized if he is satisfied that the property is not liable to forfeiture, and is not required for the purposes of investigations under the Act or prosecution under any other law.

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66 Section 99 (1) of Cap 87 of the Laws of Zambia.


68 Matsheza and Mupita: Southern African Development Community Anti- Corruption Laws; a Case for Harmonisation, Page 76.

69 Matsheza and Mupita: Southern African Development Community Anti- Corruption Laws; a Case for Harmonisation, Page 76.

It terms of Section 16 (2), where property is released under subsection one, the officer effecting the seizure or the state or any person acting on behalf of the state, shall not be liable to any civil proceedings by any person unless it is proved that the seizure and release had not been effected in good faith. Under Section 17, any property which is seized under this Act, and which is in possession or under control of a person convicted of a money laundering offence and which property is acquired from proceeds of the crime shall be liable to forfeiture by the High Court.

The Act under Section 18 empowers the Commissioner, in the face of a dispute over forfeited property to apply to court for appropriate determination.

It is on the above observations that the Prohibition and Prevention of Money Laundering Act is said to be comprehensive and effective\(^{71}\) in the seizure and confiscation of proceeds from activities associated with corruption and money laundering.

The power to prosecute offences under the Prohibition and Prevention of Money Laundering Act using the Penal Code was said by Counsel for the Applicants to be illegal and in excess of the respondent’s jurisdiction, the applicants for judicial review in the case of The People v Anti-Money Laundering Unit ex parte Rajan Mahtani, Chisha Mutale and Parvati Nachumuthu (2008).\(^{72}\) This case commenced as an application for leave to apply for judicial review, pursuant to Order 53 rule 3 of the Rules of the Supreme Court of England, White Book 1999 Edition.

The applicants in the above case sought (a) an order of certiorari to remove into the High Court for the purposes of quashing the decision by the Anti-Money Laundering Investigations Unit to arrest, charge and prosecute the Appellants with the offence of forgery contrary to section 344(a) and section 347 of the Penal Code on allegations that the applicants between December 2006 and December 2009 jointly and whilst acting together forged share transfer forms transferring shares in Zambezi Portland Cement Limited to Finsbury Investments

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\(^{71}\) Matsheza and Mupita: : Southern African Development Community Anti- Corruption Laws; a Case for Harmonisation, at Page 77.

\(^{72}\) The People v Anti-Money Laundering Unit ex parte Rajan Mahtani, Chisha Mutale and Parvati Nachumuthu (2008) HC 118.
Limited and Ital Terrazo Limited. Secondly, the applicants also sought an order of certiorari to quash the decision of the respondents to arrest, charge and prosecute the Applicants with the offence of uttering of forged documents contrary to section 352 of the Penal Code, Cap 87 of the Laws of Zambia on allegations that the applicants between the dates cited above, jointly and whilst acting together uttered share transfer forms purportedly transferring shares to Finsbury Investments Limited and Ital Terrazo to the Registrar of Patents and Companies Registration Office (PACRO).

The High Court dismissed the appellants’ argument that the respondent’s power to prosecute is confined to prosecuting offences under the Prohibition and Prevention of Money Laundering Act or the Narcotic Drugs and Psychotropic Substances Act, and did not extend to the Penal Code.

The Supreme Court found that the lower court had misdirected itself on the essence of judicial review, which is for the High Court to exercise its supervisory authority over persons and bodies performing public functions and inferior courts. The court further stated that the papers presented before the court were seeking permission of the court to look into the lawfulness and not the merits of the decision made by the Anti-Money Laundering Unit. It is important to note that by challenging illegality of a public authorities decision, the applicants seek to expose the fact that the authority has not acted in accordance to the statutory authority, as held by Lord Diplock in the case of Council of Civil Service Union v Minister of Civil Service (1894). 74

The Prohibition and Prevention of Money Laundering Act has been reviewed for the purpose of drawing a comparison with the Penal Code, especially on their significance in the prosecution corruption cases, and in the confiscation and forfeiture of proceeds of money laundering a crime which is closely related to corruption in Zambia. Mtaseza and Mupita have asserted that the provisions of the Prohibition and Prevention of Anti-Money Laundering

74 Council of Civil Service Union v Minister of Civil Service (1894) 3 ALL ER 935.
Act are quite comprehensive and empower competent authorities to seize and confiscate property derived from

money laundering activities. This position on the law makes it strong in averting grand corruption.

4.3 Analysis of responses from interviews

Among the first interviewees to comment on this study was Professor Muna Ndulo. He stated that the fight against corruption cannot be won by legal reforms alone, but needs political will, cooperation and participation of all people. It has been observed that political will plays a key role in the fight against corruption. Tangri and Mwenda\textsuperscript{76} observe that the situation is worsened by the International actors' inability to effective contribute to the fight against corruption. In Uganda, Tangri and Mwenda note on the experiences in East Africa, that the top levels of authority have shown a willingness to weaken the ability of oversight institutions to control their corruption in order to protect their personal and regime interests.\textsuperscript{77}

Tangri and Mwenda\textsuperscript{78} observe in another article, that All over sub-Saharan Africa, public watchdog bodies have failed to act decisively against the big, corrupt, wrongdoers and have them prosecuted in courts of law. Hardly anywhere has a major politician or bureaucrat been punished for illegal and corrupt behaviour. It is this failure to charge high level and well connected figures that has created a climate of impunity in Africa countries and encouraged top leaders to think they will never be punished for their misdeeds.\textsuperscript{79} For instance, it has proved difficult to get criminal convictions in the courts of law in Zambia. Richard Sakala, A State House aid in charge of a presidential housing scheme is the only one who has been


convicted and jailed of corrupt practices. Another significant conviction is that of Samuel Musonda who was sentenced to fourteen years in prison, and he appealed. Is has also been observed that in Zambia, political expediency militates against prosecution of corruption cases, and keeps corrupt people in power. Van Donge observes that there is undoubtedly a group in or near power that will resist the emergence of a political culture where political leaders can be made accountable for criminal behaviour, yet a blanket interpretation of the persistence of predatory political elites obscures important differences between political cultures and blocks further analysis. Resistance against corruption is evident in Zambian political culture, and Scott Taylor postulates that;

‘Certainly corruption continues to exist in Zambia. Yet a normative environment is slowly emerging, even within the bureaucracy. Moreover, at the presidential level, ‘the greatest benefit is laying a precedent’. In this respect, at least, it matters less that Levy Mwanawasa personifies the classical ‘big man’ than he and those who follow his lead to ‘catch the big fish’ are binding themselves, consciously or otherwise, to an evolving set of norms and legal-institutional remedies that constrain future corruption’. 

Van Donge capitulates in conclusion that predatory elites have undoubtedly the tendency to re-emerge after political upheaval, but they are not above political struggle. Political moves against predatory behaviour should be seen as part of an ongoing struggle in which the influence of international and local forces intermesh.

Jan Kees Van Donge has observed that the international community plays a key role in combating corruption. He states that in Zambia donors played a key role in fighting corruption when Chiluba was still in power, as they paid for the Accountants’ probe into metal marketing and financed the task force to set up the prosecution of the former leader. Van Donge observes that a high point in donor involvement in the Chiluba case was opened in London by the

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80 Scott D. Taylor, ‘Divergent political-legal responses to past presidential corruption in Zambia and Kenya: catch the “big fish”, or letting them off the hook?’, Third World Quarterly 82, 2 2006), Pages 281-301.

Zambian government against many other co-accused senior government officials. The trial was funded partially by a US$ 2 million grant from Britain’s Department for International Development (DFID). The support for the London trial by DFID can be justified by the strategic role given to governance issues in poverty reduction.

It has been argued that the association of government integrity with may positive developments, notably faster economic growth and a range of instruments is advocated to fight predatory behaviour in public office.\(^{82}\) Financial probity is seen as an essential part of good governance. This is considered a truly international public good, championed by the World Bank and the non-governmental Transparency International.\(^{83}\)

The International community’s involvement in the fight against corruption goes with challenges, and hence the struggle for integrity in public office has been construed as a confrontation of international actors and local elites leading to the common cause of external donors failing to address internal political matters.\(^{84}\) This is what has often been expressed as ‘lack of political will’ on the part of national governments. However,

Van Donge asserts that the Chiluba case demonstrates the fractured nature of Zambian politics, as the conflict around the ‘plunder of natural resources’ was the in the first place a political struggle within Zambia.

Professor Kenneth Mwenda,\(^{85}\) states that as much as legal reforms were cardinal in the fight against corruption, there was need to strengthen institutional, regulatory and organisational

\(^{82}\) Jan Kees Van Donge, The Plunder of Zambian Resources by Frederick Chiluba and His Friends: A Case Study of the Interaction between national Politics and the International Drive Towards Good Governance, Page 86.

\(^{83}\) Susan Rose-Ackerman, ‘Governance and Corruption’ in Bjorn Lomborg (ed), Global Crises, Global Solutions (Cambridge University Press, Cambridge 24), pp. 31-22, provides a comprehensive and detailed overview of these issues from a vantage that is associated with the World Bank. The associations of good governance, including human rights and democracy, with positive economic outcomes are challenged by Dani Rodrik, One Economics, Many Recipes: Globalization, Institutions and Economic Growth( Princeton University Press, Princeton NJ, 2007, pp. 166-183.


\(^{85}\) Professor Kenneth Mwenda, Interviewed: on his satellite phone, December 5th 2010.

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frameworks in order to effectively fight corruption in Zambia. This view is shared by many scholars and writers on corruption.

4.4 Analysis of questionnaire responses on the ACC Act

Out of the 100 respondents to the questionnaire, 79% affirmed having frequently taken time to read and familiarize themselves with sections on criminalization and punishment for the offence of corruption, while 56% stated that there were numerous laws on corruption and among whom said they could foresee a situation where people would abuse process by raising different forms of defense to evade the law. It was observed that all the respondents being lawyers must have been acquainted with the law. It was suggested that Government considers having a fixed code on corrupt practices for purposes of clarity and precision.

Respondents were of the view that the mischief which was meant to be cured by enactment of the ACC Act of 1996 was the grand corruption that occurred among senior public officials at the time, with 60% acknowledging that the mischief had to some extent been cured by the 1996 Act but noted that Sections 24 to 40 needed to include private workers for the law to be inclusive of the general citizenry. It was argues that an important law such as the ACC act could be more effective if it covered the private sector which had witnessed exponential growth from the time the Zambian economy was liberalized. Further, it was noted that most corrupt practices occurred in a network covering individuals in both the public and private sectors.

The respondents stated that the ACC Act did not adequately enable criminalization and punishment for corrupt practices, with 84% saying the statute was couched in general terms, and failure to address corruption in specific terms was regarded as its main weakness. Noted among the major weaknesses was lack of clear distinction on grand corruption and other lighter aspects of the vice.

It is important to reflect on the respondents’ observations above, as the ACC Act, even after being amended has continued to be perceived as a weak law as evidenced in the argument from scholars and Government officials in Chapter Three.
When asked on the removal of abuse of office clause, 56% of the respondents were of the view that the law after removing section 37(2) would not be strong as it can not longer address the intended purpose of the ACC Act as people in public offices would live beyond their means with impunity. It was argued that the removal of the abuse of office clause will make the Act fail to achieve the purpose for its enactment. Generally, the ACC Act was perceived to be a relatively weak law in combating corruption with 37% of the respondents suggesting that Government should emulate the Sierra Leonean and Kenyan statues which were perceived to be quite effective in fighting the scourge.

The above view on removal of the abuse of office clause is faced with an opposing one which borders on the jurisprudence propounded by Professor Mvunga, on natural justice, on the right to be declared innocent until proved guilty. Respondents supporting the above view noted that without the amendment to the ACC Act of 1996 a person would have to show why he should not be prosecuted by showing how he acquired his excess wealth, removing the onus in criminal law from the prosecution and laying it on the defendant. It is important to note the correlation between the information from desk research in chapter three and that covered in the analysis above. There are two schools of thought on the removal of abuse of office clause and it is a matter of law, which one of them must be correct. Nevertheless, it is also important to consider, like Professor Mwenda ably advised not to focus on the legal framework alone, but consider other actors in an effort to have a balanced and more effective approach in developing strategic to combat the scourge.

4.5 Conclusion

It is clear from the above discussion and views of the respondents that there is no corruption offence under the Penal Code, save for the abuse of authority in Section 99, a factor which makes the statute a relatively weaker supplement for the ACC Act compared to the Anti-Money Laundering Act. This is evidenced by comments from 72% of the respondents who stated that Section 99 is focused on public officials and so is limited in its effectiveness, while 20 % were of the view that Section 99 supplements provisions in the ACC Act, specifically Section 37 (2), the latter being perceived to be weak in addressing corruption. The above argument with the amendment of the ACC Act in 2009 can no longer be valid. Generally, the
Penal Code was ranked lower than the ACC Act in terms of the strength in criminalization and punishment, and the same pattern was portrayed in assessing the statues objectives, sections and penalties.
CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter outlines the conclusion and recommendations from the study based on desk research analysis, questionnaire responses and interviews conducted with eminent legal scholars and practitioners.

5.2 Conclusion

It is evident from the observations made by various scholars cited above that there is need to strengthen legal, institutional and regulatory frameworks in order to effectively fight corruption in Zambia. The need to have the ACC Act amended so that offences are clearly spelt out with stiff punishments cannot be overemphasized, as Zambia has witnessed growing levels of grand corruption in the face of legal reforms which were aimed at curbing the mischief.

There is hope that when anti-corruption institutions such as the Anti-Corruption Commission and the Judiciary attain total independence from Executive influence, winning the fight against corruption will certainly be foreseeable. Zambia, implementing the 2009 National Anti-Corruption Policy under the leadership of Rupiya Banda will go down in history as an African State committed to the fight against corruption from that angle, save for the begging question whether the current turn around on the Chiluba case would still create credence in the eyes of international governance institutions, for a stance which is likely to be construed as “lack of political will”.

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5.3 Recommendations

Scholars have observed that every country has to determine its own priorities on the war against corruption. Therefore to tame the surge in Zambia as Obayelu (2007)\textsuperscript{86} pointed out on Africa’s corruption problems, there is need for a mechanism that will transform dramatically the culture and legacy of corruption. There is need for the general population to be oriented to a better value system. To achieve this, it is important to go down to the very core of the problem of corruption and address the issues at that level.

Positive transformation of Zambia can only occur through effectively implementing the legal mechanisms already in place. Zambia has introduced since 1991, liberalization of the economy which has entailed privatization of state owned enterprises, deregulation, removal of market restrictions and civil service reforms aimed at promoting the integrity of the public service.

The key to galvanize and orchestrate the above measures is achievable through the following:

5.3.1. There is need to have honest leaders with the political will to tackle corruption. In this regard, leaders should heed the call for political will by ensuring that senior public officials are not shielded from prosecution, but adjudged with probity, in the most transparent way by courts of law.

5.3.2 Political leadership must demonstrate the willingness to track and punish corrupt officials and citizens as well as create conducive economic climate that would raise the standard of living of the people.

5.3.3 Laws on corruption in Zambia must be strengthened so as to deter would-be offenders. Sentences for corrupt practices in the health, education and roads sectors for instance need revision by amending them with a view of increasing the sentences for stipulated convictions.

5.3.4. An amendment bill to the ACC Act must be proposed in parliament as a matter of urgency, with stiffer penalties on corruption offence (Appendix I).

5.3.5 The Penal Code be amended to include individuals in private service.

5.3.6 There is need for the provision of adequate resources to anti-corruption agencies so as to make them more effective.

5.3.7 Government must commit adequate resources to anti-corruption agencies, and make them truly independent, so that they are able to withstand the opposing forces of the corrupt elements in the country. This will call for the restructuring of the Anti-corruption Commission, re-organizing it into a statutory body, an autonomous legal persona.
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Proposed Amendment to the

Anti-Corruption Commission Act

1. In order to deter would be offenders under the Act, it is proposed that:

(a) Corrupt acts which have a bearing on the delivery of essential public services and goods should attract stiff punishment with features similar to those obtaining under capital offences; in particular, suspects should not be admitted to bail or granted police bond,

(b) Prompt freezing of assets should a priority for purposes of preserving evidence,

(c) The law should allow for preservation orders of whatever nature and form including electronic data for related offences, and

(d) A corruption convict should be blacklisted and stopped from procurement processes for life.
Dear Respondent,

This questionnaire is intended to obtain information on assessing the effectiveness of the anti-corruption laws in Zambia. Specifically it aims at examining the Anti-Corruption Commission Act No. 42 of 1996, and the Penal Code Act, Cap 87 of the Laws of Zambia.

This questionnaire is in pursuance of carrying out the Directed Research which is in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LLB) at the University of Zambia.

All your responses will be treated with the utmost confidentiality that they deserve.

Thank you,

William Chewe Musonda Email: chewemusonda@hotmail.com

1. Have you read the Anti-Corruption Commission Act No. 42 of 1996, especially sections on criminalization and punishment for the offence of corruption?

2. What do you think is the mischief which was meant to be cured when enacting the ACC Act?

3. Do you think the mischief has been cured by this law?
4. Do you think the ACC Act adequately enables criminalisation and punishment for corrupt practices?  
   Yes(explain)  
   No(explain)  

5. Do you think the Act has sections that adequately address corruption offences?  
   Yes | No  

6. If yes, which sections are adequate? Explain your answer.  

7. If no, which sections do you think would need to be amended?  

8. What is the effect of the removal of the abuse of office clause from the ACC Act?  

9. Have you read the Penal Code, cap 87 of the laws of Zambia, especially on criminalisation and punishment for corrupt practices?  
   Yes | No  

10. In what ways would you say the Penal Code is supplementary to the ACC
11. In what ways would you say the Penal Code is a complementary law of the ACC Act?

12. The Penal Code classifies some corruption offences as misdemeanours and others as felonies. What is your view on this?

13. The Penal Code provides for post-conviction forfeiture of property used for or derived from the commission of an offence. Do you think this provision aids in combating corruption?

14. The Penal Code has a provision on post-conviction restitution to the rightful owner of the amount or value of any gratification; or where the rightful owner cannot be ascertained or traced the amount of the value forfeits to the State through the general revenue of the republic. What is your view on this?

15. It has generally been perceived that there are numerous laws on corruption in Zambia. Is this true?

16. If yes, what is the most likely possible ramification of this?
17. What is the best way of addressing the above situation?

18. To what extent do you assess the level of effectiveness of each one of the following statutes:

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<th>ACC ACT</th>
<th>LEVEL OF EFFECTIVENESS IN AVERTING CORRUPTION</th>
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**A- CRIMINALISATION**

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**B- PUNISHMENT**

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**PENAL CODE ACT** | **LEVEL OF EFFECTIVENESS IN AVERTING CORRUPTION**

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19. Do you have any suggestion for the improvement of the two cited laws on corruption? (Please attach if space is limited)

**THANK YOU**